

GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT



Application No. 14918, as amended, of Michael Darby and Jeffrey Neal, pursuant to 11 DCMR 3108.1 and 3107.2, for a special exception under Sub-section 2003.1 to change a nonconforming use from commercial photo studio, lab, office and reception room to office space on the first floor and basement, and a variance to allow an addition to a nonconforming structure that is now exceeding the allowable percentage of lot occupancy requirements [Paragraph 2001.3(a)] for a proposed third-story addition, and alternations and repairs to allow office and residential use of a nonconforming structure in an R-4 District at premises 316 F Street, N.E., (Square 778, Lot 811).

HEARING DATE: December 21, 1988

DECISION DATE: January 4, 1989

FINDINGS OF FACT:

1. The application was amended to reflect a change in ownership from Del and Elizabeth Ankers to Jeffrey Neal and Michael Darby which occurred subsequent to the filing of the application.

2. The property is located on the north side of F Street, between 3rd and 4th Streets, and is known as premises 316 F Street, N.E. It is zoned R-4.

3. The site is rectangular in shape with a frontage of 54.71 feet along F Street and a depth of 100 feet. The site contains approximately 5,471 square feet of lot area and abuts a 30 foot wide public alley at the rear.

4. The property is currently improved with a two-story plus basement brick structure which was built in approximately 1927. The building has been used for commercial purposes since its erection. The building has been used as a photography studio, lab, office and reception area continuously since 1958.

5. The applicants seek special exception relief to change a nonconforming use from a commercial photography studio, laboratory, office and reception room on the first floor and basement to general office use. The second floor of the building is currently occupied under a certificate of

occupancy for general office use and is not under consideration by this Board.

6. The applicants also seek area variance relief to allow construction of a third floor to the building which already exceeds the allowable percentage of lot occupancy for the proposed construction of two 1,400 square foot residential units.

7. The basement of the building will contain approximately 2,500 square feet of office space. The first floor will contain approximately 2,100 square feet of office space. The second floor contains approximately 4,300 square feet of office space. The proposed third floor addition will contain two residential units of 1,400 square feet each.

8. The applicants are required to provide one on-site parking space for the proposed residential units. However, the applicants propose to devote approximately 2,200 square feet on the first floor of the building to interior parking for ten vehicles. Access to the first floor interior parking will be from the 30 foot public alley to the rear of the site. Two of the interior parking spaces will be available for use by the residential tenants of the building.

9. The applicants propose to provide parking for an additional three vehicles on the northwest portion of the site with access to the public alley. One of the three side yard spaces will be available to the residential occupants of the building. During non-business hours, at nights, and on weekends all three spaces will be available to the residents of the building.

10. On-street parking on F Street is controlled by the Residential Parking Permit Program. The property is convenient to public transportation. Metrobus routes and the Union Station Metrorail station are located within two blocks of the subject site.

11. DCMR 11 Section 2003.1 permits the Board to authorize a change of nonconforming use to a use that is permitted as a matter-of-right in the most restrictive district in which the existing nonconforming use is permitted as a matter-of-right. The existing photography studio is first permitted as a matter-of-right in the C-2 District. The general office use is first permitted as a matter-of-right in the C-1 District.

12. The surrounding neighborhood is characterized by older, two- and three-story row houses interspersed with a few small apartment houses. The old Logan School, which has been converted to residential units, is located one block

northwest of the subject site at 3rd and G Streets, N.E. The Stuart Junior High School is located one-half block southwest of the subject site at 4th and F Streets, N.E.

13. The proposed tenants of the proposed office space are expected to be small, neighborhood serving uses. The existing tenant may continue to occupy a portion of the proposed office space.

14. The current number of employees at the subject premises is ten. The applicant projects a total of twelve employees for the proposed office use. The hours of operation will not be changed. There will be no change in loading and unloading operations. Trash pick up will be from the public alley to the rear. The proposed use is first permitted in a more restrictive zone district than the existing nonconforming use.

15. The Zoning Regulations permit enlargements or additions to nonconforming structures provided that:

- (a) The structure shall conform to percentage of lot occupancy requirements; and
- (b) The addition or enlargement itself shall conform to use and structure requirements; and
- (c) The addition or enlargement itself shall not increase or extend any existing, nonconforming aspect of the structure, and shall not create any new nonconformity of structure and addition combined.

16. The R-4 District permits a maximum lot occupancy of sixty percent of the subject site or 3,287 square feet. The existing structure occupies 4,792 square feet of the site. The proposed third-story addition will not increase the existing nonconforming lot occupancy nor create any new nonconforming aspect of the structure.

17. The R-4 District permits the construction of detached and semi-detached dwellings, row dwellings, and flats, as well as the conversion of buildings or structures existing before May 12, 1958 to an apartment house provided that a minimum of 900 square feet per unit is provided. The applicants propose to construct a third story addition containing a flat at the subject premises.

18. The applicants testified that the subject property is affected by exceptional and extraordinary conditions, as follows:

- (a) The lot width of 54.71 feet is very large compared

to the average lot width of eighteen feet in the R-4 District on Capitol Hill.

- (b) The commercial character and design of the existing structure has existed in excess of seventy years and is unique in the predominantly residential neighborhood.

19. The applicants testified that the proposed addition would not adversely impact on adjoining and neighboring properties for the following reasons.

- (a) The proposed addition will be set back from the front of the building approximately ten feet so as to minimally affect the visual appearance of the structure from the street.
- (b) The proposed addition will match the existing facade and will be further screened from view by the existing parapet wall.
- (c) The applicants are providing two on-site parking spaces in excess of the one space required by the Zoning Regulations for the residential component of the project.
- (d) The proposed addition conforms to the bulk and use requirements of the R-4 District and does not encroach on any required open space.

20. The applicants testified that the strict application of the Zoning Regulations would cause a practical difficulty upon the owners of the property in that the applicants cannot acquire additional land to eliminate the required variance relief because it is bounded by improved properties to the east and west and public rights-of-way to the north and south. Further, demolition to bring the existing structure into compliance with the lot occupancy requirements would result in the loss of the interior on-site parking area, as well as the removal of an existing load bearing wall, stairwell and building mechanical support areas.

21. The applicants also presented testimony concerning the difficulty of converting the existing structure to residential use. The structural slab between floors is extremely thick and economically and logistically impractical to penetrate to install the residential plumbing necessary for multiple kitchens and bathrooms. The applicants testified that they will use the existing plumbing for the proposed office use. Because of ceiling height constraints, the basement cannot comply with residential building code requirements. The open floor plan of the existing building and large width of the building

make the light and ventilation requirements for potential bedrooms impractical and difficult.

22. The Office of Planning, (OP) by memorandum dated December 12, 1988, recommended approval of the application with conditions. The OP was of the opinion that the change in nonconforming use would not be detrimental to the neighborhood nor create any new or negative impacts due to traffic noise or operations. The OP was further of the opinion that the proposed third floor addition would not create any negative impacts on the surrounding area and that the variance relief is needed because of severe lot constraints and the inability of the applicants to obtain additional adjacent property. The OP recommended that the application be conditioned as follows:

- (a) A designated residential parking space shall be provided on the subject property which would be readily accessible at all times (24 hours per day); and,
- (b) The preservation and renovation of the existing building facade shall include the preservation of the exposed brick in its existing condition.

The Board concurs with the recommendation of the OP and notes that plans submitted by the applicants incorporate the recommended conditions.

23. Advisory Neighborhood Commission (ANC) 6A, by letter dated December 13, 1988, offered no objection to the special exception to change the existing nonconforming use since the building has always served a commercial purpose in a residential area and little change would occur if the special exception is granted. The ANC opposed the development of the third floor unless the applicants are able to secure at least five additional parking spaces for commercial and residential tenants in addition to the thirteen parking spaces proposed.

24. By letter dated December 14, 1988, the Capitol Hill Restoration Society, Inc., recommended denial of the application on the grounds that nonconforming uses are not favored by law and that such use would subvert the intent and purpose of residential districts. The Society also stated that no showing had been made as to why the existing building could not be converted to residential use and that parking generated by the proposed use would adversely impact the neighborhood.

25. By letter dated December 20, 1988, the Stanton Park Neighborhood Association recommended denial of the requested relief on the grounds that the special exception

was unnecessary and that no compelling reasons were presented for the third story addition.

26. There was opposition to the granting of the application at the public hearing and of record. The opposition was generally based on the following:

- (a) The parking demand generated by the proposed use would adversely impact on the neighborhood.
- (b) The existing structure currently exceeds the permitted lot occupancy.
- (c) The existing structure houses the only commercial use in the block and is out of scale with the residential structures on the block.

27. In addressing the issues and concerns of the ANC and the opposition, the Board finds that:

- (a) The proposal results in a change from a use first permitted in a C-2 District to a use first permitted in a C-1 District, resulting in a more restrictive use of the property.
- (b) The applicants are providing substantially more on-site parking than is required for zoning purposes in order to lessen or alleviate any adverse impacts in terms of traffic and parking generated by the proposed use.
- (c) The construction of the third floor flat would be permitted as a matter of right if the existing structure did not exceed the permitted lot occupancy requirements.
- (d) Although the applicants addressed the difficulties which would be involved in converting the existing structure to residential use, the burden of proof imposed by the Zoning Regulations does not require such a showing.
- (e) The Board is persuaded by the applicants' arguments that the site is affected by an exceptional or extraordinary condition inherent in the property which would create a practical different upon the owners to develop the property in accordance with the strict application of the Zoning Regulations.

CONCLUSIONS OF LAW AND OPINION:

Based on the foregoing Findings of Fact and the evidence of record, the Board concludes that the applicants are seeking a special exception and an area variance. The granting of the special exception requires a showing through substantial evidence of compliance with the requirements of 11 DCMR 2003.1 and 3108.1. The Board concludes that the applicants have met the burden of proof. The proposed use is first permitted in the C-1 District and is more restrictive than the existing C-2 use. The site has been devoted to nonconforming commercial use since its construction in 1927, predating the Zoning Regulations. The proposed use will not intensify or create any external effects such as noise, traffic, or parking. The Board concludes that the size, character and nature of the proposed use is designed to attract its clientele from the Capitol Hill neighborhood. The Board further concludes that the proposed use will not adversely affect the neighborhood and will be in harmony with the general purpose and intent of the Zoning Regulations and Map.

As to the area variance, the applicants must show substantial evidence of a practical difficulty upon the owner arising out of some exceptional or extraordinary condition of the property. The Board further must find that the relief requested can be granted without substantial detriment to the public good and that it will not substantially impair the intent of the zone plan. The Board concludes that the applicant has met the requisite burden of proof. The existing structure predates the Zoning Regulations and is currently nonconforming as to lot occupancy. The proposed addition will not increase the existing lot occupancy and is in compliance with the remaining requirements of the R-4 District. The proposed addition is set back so as not to adversely impact adjoining and nearby properties due to loss of light and air. The applicants are unable to acquire additional land to meet the Zoning Regulations.

The Board concludes that the requested relief can be granted without substantial detriment to the public good and without substantially impairing the intent, purpose and integrity of the zone plan. The Board further concludes that it has accorded to the ANC the "great weight" to which it is entitled. Accordingly, it is ORDERED that the application is hereby GRANTED.

VOTE: 3-2 (Charles R. Norris, Carrie L. Thornhill and Paula L. Jewell to grant; William F. McIntosh and John G. Parsons opposed to the motion).

BY ORDER OF THE D.C. BOARD OF ZONING ADJUSTMENT

ATTESTED BY:


EDWARD L. CURRY
Executive Director

FINAL DATE OF ORDER: MAY 5 1989

PURSUANT TO D.C. CODE SEC. 1-2531 (1987), SECTION 267 OF D.C. LAW 2-38, THE HUMAN RIGHTS ACT OF 1977, THE APPLICANT IS REQUIRED TO COMPLY FULLY WITH THE PROVISIONS OF D.C. LAW 2-38, AS AMENDED, CODIFIED AS D.C. CODE, TITLE 1, CHAPTER 25 (1987), AND THIS ORDER IS CONDITIONED UPON FULL COMPLIANCE WITH THOSE PROVISIONS. THE FAILURE OR REFUSAL OF APPLICANT TO COMPLY WITH ANY PROVISIONS OF D.C. LAW 2-38, AS AMENDED, SHALL BE A PROPER BASIS FOR THE REVOCATION OF THIS ORDER.

UNDER 11 DCMR 3103.1, "NO DECISION OR ORDER OF THE BOARD SHALL TAKE EFFECT UNTIL TEN DAYS AFTER HAVING BECOME FINAL PURSUANT TO THE SUPPLEMENTAL RULES OF PRACTICE AND PROCEDURE BEFORE THE BOARD OF ZONING ADJUSTMENT."

THIS ORDER OF THE BOARD IS VALID FOR A PERIOD OF SIX MONTHS AFTER THE EFFECTIVE DATE OF THIS ORDER, UNLESS WITHIN SUCH PERIOD AN APPLICATION FOR A BUILDING PERMIT OR CERTIFICATE OF OCCUPANCY IS FILED WITH THE DEPARTMENT OF CONSUMER AND REGULATORY AFFAIRS.

14918order/BHS3

GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT



APPLICATION No. 14918

As Executive Director of the Board of Zoning Adjustment, I hereby certify and attest to the fact that a copy of the Order of the Board in the above numbered case, said Order dated MAY 5 1980, has been mailed postage prepaid to each party who appeared and participated in the public hearing concerning this matter, and who is listed below:

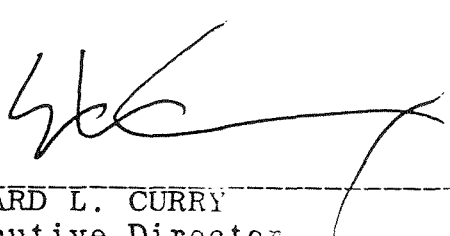
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EDWARD L. CURRY
Executive Director

DATE: MAY 5 1980